

AMENDED IN SENATE APRIL 7, 2005

SENATE BILL

No. 636

Introduced by Senator Figueroa

February 22, 2005

An act to add Section 1747.11 to the Civil Code, relating to credit cards.

LEGISLATIVE COUNSEL'S DIGEST

SB 636, as amended, Figueroa. Credit cards: photo identification.

Existing law governs the issuance and use of credit cards.

This bill, *operative July 1, 2006*, would prohibit a retailer, *as defined*, from accepting a credit card as payment in full or in part for any person-to-person transaction, *as defined*, on business premises located in California unless the person using the credit card presents photo identification. *The bill would except from the definition of retailers specified governmental agencies and a person or entity that primarily engages in the preparation or service of food or beverages to the public. The bill would limit the use of the photo identification, as specified. The bill would require a retailer to take specified actions to reasonably comply with its requirements. The bill would provide for civil penalties for violations of its provisions, and moneys from these penalties would be deposited in a trust fund for reimbursement of those governmental agencies that successfully maintained the action that resulted in the civil penalties. The bill would provide that a retailer is not liable for a violation of its provisions if the retailer demonstrates by a preponderance of the evidence that he or she maintained reasonable procedures to comply with its requirements, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1747.11 is added to the Civil Code, to read:

1747.11. (a) *For the purposes of this section:*

(1) *“Expressly authorized” means that the intended user has been provided materials by the cardholder or card issuer which clearly identify the intended user by name and expressly consent to the use of the credit card.*

(2) *“Person-to-person transaction” means a transaction on business premises in which a person intending to use a credit card interacts, in full or in part, at the point of sale with the retailer or his or her employee. “Person-to-person transaction” does not include a transaction by means of an automated checkout service.*

(3) *“Photo identification” means a form of positive identification containing a photo, and includes, but is not limited to, a driver’s license, state identification card, military identification card, or passport.*

(4) *“Retailer” means a person or entity other than a card issuer who furnishes money, goods, services, or anything of value upon presentation of a credit card. “Retailer” does not mean the state, a county, city, city and county, or other public agency. “Retailer” does not include a person or entity that primarily engages in the preparation or service of food or beverages to the public.*

(b) *A retailer shall not accept a credit card as payment in full or in part for any person-to-person transaction on business premises located in California unless the person presenting the credit card presents photo identification pursuant to the provisions of this section.*

(c) *The presentation of photo identification shall only be used as a visual confirmation of the identity of the person presenting the credit card as the cardholder or as an intended user of the credit card expressly authorized by the cardholder to use the credit card.*

(d) *A retailer shall do the following to reasonably comply with requirements of this section:*

(1) *Update procedures and procedural documents to reflect the requirements of this section.*

1 (2) *Provide notification of the requirements of this section to*
2 *all relevant personnel, including management, sales associates,*
3 *and anyone who may be directly or indirectly involved with a*
4 *consumer at any time during the course of a transaction.*

5 (3) *Develop and implement internal monitoring policies and*
6 *practices to ensure that employees adhere to the procedures*
7 *adopted by the retailer to ensure compliance with this section.*

8 (e) *The Attorney General, or any district attorney or city*
9 *attorney within his or her respective jurisdiction, may bring an*
10 *action in the superior court in the name of the people of the State*
11 *of California to enforce the provisions of this section.*

12 (f) (1) *A retailer who violates the requirements of this section*
13 *is liable for the following:*

14 (A) *A civil penalty of two hundred and fifty dollars (\$250) for*
15 *each violation addressed by an initial action.*

16 (B) *A civil penalty of one thousand dollars (\$1,000) for each*
17 *violation addressed by any subsequent action.*

18 (C) *In an action in which the retailer is found to have violated*
19 *this section, the retailer shall be liable for reasonable attorney's*
20 *fees, as determined by the court, and costs.*

21 (2) *In addition to the remedies provided under paragraph (1),*
22 *a retailer who is found to have willfully failed to comply with the*
23 *requirements of subdivision (d) is liable for a penalty of one*
24 *hundred dollars (\$100) a day for each day the retailer remains in*
25 *noncompliance following delivery of judgment to begin on a date*
26 *to be determined by the court and no sooner than the day*
27 *judgment is rendered.*

28 (3) *A retailer shall not be found liable for failing to comply*
29 *with the requirements of this section if the retailer demonstrates*
30 *by a preponderance of the evidence that the retailer maintained*
31 *reasonable procedures to comply with this section, pursuant to*
32 *subdivision (d), and the violation occurred as the result of a bona*
33 *fide error by an employee.*

34 (g) *All civil penalties received by a court pursuant to this*
35 *section shall be remitted to the Controller for deposit in the*
36 *Credit Card Photo Identification Trust Fund, which is hereby*
37 *created. Money in the Credit Card Photo Identification Trust*
38 *Fund shall be used only for reimbursement of those*
39 *governmental agencies that successfully maintained the action*
40 *that resulted in the civil penalties.*

1 (h) *This section shall not be construed to create any liability*
2 *for a retailer other than what is explicitly provided by its*
3 *provisions.*

4 (i) *The rights and remedies of this section are cumulative and*
5 *are in addition to any other rights and remedies available under*
6 *law.*

7 (j) *This section shall not be construed to supersede any*
8 *requirement of Section 1747.08. This section shall not be*
9 *construed to prohibit the use of a credit card by a minor*
10 *pursuant to authority apparently granted by the cardholder.*

11 SEC. 2. *This act shall become operative July 1, 2006.*